

JS 44 (Rev. 06/17)

CIVIL COVER SHEETCounty in which action arose: Macomb

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Stephanos Tsianikas

DEFENDANTS

Universal Fuel, LLC

(b) County of Residence of First Listed Plaintiff Macomb

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Disability Advocates of Michigan, David S. Parnell/Sean R. O'Mara
21929 E. Nine Mile Rd., St. Clair Shores, MI 48080
(586)200-6404

Attorneys (If Known)

Potter, DeAgostino, O'Dea & Patterson, Rick J. Patterson/Steven M. Potter
2701 Cambridge Ct., Ste. 223, Auburn Hills, MI 48326
(248)377-1700

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input checked="" type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1331Brief description of cause:
denial of public accommodation**VII. REQUESTED IN COMPLAINT:**
☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ 25,000.00 ➤

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

December 27, 2018

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

☐ Yes

☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ Yes

☒ No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

Notes :

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STEPHANOS TSIANIKAS,

Plaintiff,

v.

UNIVERSAL FUEL, LLC,

Defendant.

Civil Action No. _____

Lower Court Case No. 2018-004406-CZ

DISABILITY ADVOCATES OF MICHIGAN
DAVID S. PARNELL (P77628)
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POTTER, DeAGOSTINO, O'DEA & PATTERSON
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RICK J. PATTERSON (P55706)
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spotter@potterlaw.com
rjpatterson@potterlaw.com
rclark@potterlaw.com

NOTICE OF REMOVAL

Defendant, Universal Fuel, LLC, pursuant to 28 U.S.C. § § 1331, 1441 and 1446, files this Notice of Removal, removing Case No. 2018-004406-CZ from the Macomb County Circuit Court for the State of Michigan to the United States District Court for the Eastern District of Michigan, the judicial district in which this action is pending.

Plaintiff filed his Complaint against Defendant in the Circuit Court for the County of Macomb on November 13, 2018, and served Defendant on November 29,

POTTER, DeAGOSTINO, O'DEA & PATTERSON

2018. Removal to this Court is proper pursuant to 28 U.S.C. § 1441 and § 1446.

28 U.S.C. §1441 provides that “any civil action brought in a state court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the District Court of the United states for the district and division embracing the place where such action is pending.” This court has original jurisdiction over this matter pursuant to 28 U.S.C. §1331. Plaintiff alleges a violation of the Americans with Disabilities Act, 42 U.S.C. §12181 *et. seq.*

POTTER, DeAGOSTINO, O'DEA & PATTERSON
This notice is being filed in this Court pursuant to 28 U.S.C. §1446(a) and is being filed within 30 days of receipt of service by Defendant of Plaintiff's Complaint. Attached hereto as Exhibit A are true and correct copies of all process, pleadings, and orders served upon Defendant in this action, including the original Complaint, as provided by 28 U.S.C. §1446(a).

All the requirements for removal being met, removal is proper pursuant to 28 U.S.C. §1441.

Dated: December 27, 2018
s/RICK J. PATTERSON (P55706)
POTTER, DeAGOSTINO, O'DEA & PATTERSON
Attorneys for Defendant
2701 Cambridge Court, Suite 223
Auburn Hills, Michigan 48326
(248) 377-1700
rjpatterson@potterlaw.com

CERTIFICATE OF SERVICE

I hereby certify that on December 27, 2018, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to all participating attorneys and such filing has been served on the following non-ECF participants: Macomb County Circuit Court, through its TrueFiling system, and David S. Parnell and Sean R. O'Mara, by first class mail through the U.S. Postal Service, at 21929 E. Nine Mile Rd., Saint Clair Shores, MI 48080.

/s/RICK J. PATTERSON (P55706)

Attorney for Defendant

2701 Cambridge Court, Suite 223

Auburn Hills, Michigan 48326

(248) 377-1700

ripatterson@potterlaw.com

POTTER, DeAGOSTINO, O'DEA & PATTERSON

EXHIBIT A

Approved, SCAO

Original - Court
1st copy - Defendant2nd copy - Plaintiff
3rd copy - Return

STATE OF MICHIGAN JUDICIAL DISTRICT 16th JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS	CASE NO. <i>2018-004406-CZ</i>
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Court address

40 N. Main Street, Mount Clemens, 48043

Court telephone no.

586.469.5208

Plaintiff's name(s), address(es), and telephone no(s).

STEPHANOS TSANIKAS

v

Defendant's name(s), address(es), and telephone no(s).

UNIVERSAL FUEL, LLC
c/o Agent: Dennis Bostick
32900 Dequindre
Warren, MI 48092

Plaintiff's attorney, bar no., address, and telephone no.

David S. Parnell (P77628)
DISABILITY ADVOCATES OF MICHIGAN, PLLC
21929 Nine Mile Rd
Saint Clair Shores, MI 48080
P: 586.445.0110

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

- ☐ There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- ☐ There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. Attached is a completed case inventory (form MC 21) listing those cases.
- ☐ It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- ☐ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- ☒ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- ☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has

been previously filed in ☐ this court, ☐ _____ Court, where

it was given case number _____ and assigned to Judge _____.

The action ☐ remains ☐ is no longer pending.

Summons section completed by court clerk.

SUMMONS**NOTICE TO THE DEFENDANT:** In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to file a written answer with the court and serve a copy on the other party or take other lawful action with the court (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date NOV 13 2018	Expiration date FEB 12 2019	Court clerk <i>Kathy Smith</i>
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*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF MACOMB

STEPHANOS TSIANIKAS,
Plaintiff

Case No: *2018-004406* CZ
Hon.

v.

UNIVERSAL FUEL, LLC,
Defendant.

KATHRYN A. VIVIANO

Disability Advocates of Michigan, PLLC
David S. Parnell (P77628)
Sean R. O'Mara (P76140)
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E: OMaraLawFirmPC@gmail.com
E: David@Parnellfirm.com

RECEIVED
NOV 13 2018

THERE IS NO OTHER PENDING OR RESOLVED
CIVIL ACTION ARISING OUT OF THE SAME
TRANSACTION OR OCCURRENCE ALLEGED
IN THE FOLLOWING COMPLAINT.

COMPLAINT

Plaintiff, Stephanos Tsiakanikas, individually, (hereinafter referred to as "Plaintiff"), by and through the undersigned counsel hereby brings an action for declaratory judgment, injunctive relief, and attorney's fees, litigation expenses, and costs pursuant to the Americans with Disabilities Act, 42 U.S.C. § 12181 *et seq.*, and its implementing regulations (the, "ADA"); and the Michigan Persons with Disabilities Civil Rights Act, M.C.L. § 37.1301 (the "PWDCRA") against Defendant, Universal Fuel, LLC.

JURISDICTION AND VENUE

1. Plaintiff, Stephanos Tsiakanikas, is an individual residing in the City of Clinton Township, in the County of Macomb, MI.
2. Universal Fuel, Defendant, owns and/or operates a place of public accommodation located at 1950 Twelve Mile Road, Warren, MI 48092 also known as "*Sunoco Gas*."
3. Defendant owns commercial property and leases to a place of public accommodation as defined by the ADA (42 U.S.C. § 12181(7)) and the regulations implementing the ADA, specifically to a franchise known as '*Sunoco Gas*' that Plaintiff was patron in October of 2018 and encountered physical barriers to entry existing at Defendant's property.
4. Venue is properly located in the Circuit Court of Macomb County of Michigan because venue lies in the judicial district of the property situs. The Defendant's property is located in and does business within this judicial district.
5. Plaintiff's federal ADA claim is properly before this Court because state courts enjoy concurrent jurisdiction over such claims. *See Peden v. City of Detroit*, 470 Mich. 195 (2004); *citing Gulf Offshore Co. v Mobil Oil Corp.*, 453 U.S. 473, 478 (1981).

Introduction

6. This is a civil rights action against Defendant for its discrimination against persons with a disability by their failure to provide equal access to its public facility in violation of the mandates of the ADA.
7. The ADA is the central civil rights law protecting people with disabilities. The ADA uses different means than other civil rights laws, but the purpose of the laws is the same: the eradication of discrimination, as one legal scholar explained the similarity: A single step in front of a store may not immediately call to mind images of Lester Maddox standing in the door of his restaurant

to keep blacks out. But in a crucial respect they are the same, for a step can exclude a person who uses a wheelchair just as surely as a no-blacks-allowed rule can exclude an entire class of people. *Samuel Bagenstos*, *The perversity of Limited Civil Rights Remedies; The Case of "Abusive" ADA Litigation*, 54 UCLA L. Rev. 1, 23 (2006).

8. Though disability rights laws are supposed to prevent the continued isolation and segregation of people with disabilities in the same tradition as other civil rights laws, some appear to regard disability rights requirements - particularly those involving physical access requirements, such as ramps and hand rails - as different, and less important, than other civil rights, *Id.* at 24. Some also appear to assume that ADA cases are unnecessary drains on courts. But private enforcement is central to accomplishment of the ADA's rightful purposes and, as has been demonstrated repeatedly, compliance does not happen without the credible threat of private enforcement. *Id.* at 9.

9. Title III of the ADA (42 U.S.C. § 12181) broadly protects the rights of individuals with disabilities to independently and equally access places of, "public accommodation" It requires places of public accommodation to be readily accessible to, and independently usable by, individuals with disabilities. 42 U.S.C. §1218. Defendant owns and operates a place of public accommodation for purpose of the ADA. *Id.*

10. The Department of Justice (DOJ) has promulgated rules implementing Title III of the ADA, including the 1991 and the subsequent 2010 Standards for Accessible Design. The Standards set forth various standards for places of public accommodation under Title III to follow in order to make their facilities independently accessible to persons with disabilities. At issue here are several of the Standards specifically aimed at making places of public accommodation accessible to and independently usable by persons with disabilities.

11. Plaintiff Mr. Tsiakanikas is paralyzed from the waist down with no use of his legs. He is dependent solely on a wheelchair for his mobility. Plaintiff visited Defendant's premises in October of 2018 and, as set forth with specificity below, encountered unlawful and discriminatory barriers to equal and independent access and enjoyment of the premises.

12. Upon arrival at Defendant's property, Plaintiff immediately encountered difficulty with ingress and egress using his wheelchair, Defendant's property has approximately 4-inch curb that surrounds the Defendant's retail convenience store and cash register. The curb barrier surrounds its entrance that makes entry and egress impossible for a wheel chair bound individual, such as the Plaintiff. The curb barrier also surrounds all restrooms available to the public, located along side the retail store at Defendant's property.

13. Defendant's 4-inch curb constitutes an absolute barrier to entry for wheelchair bound persons such as the Plaintiff and other similarly situated individuals and is therefore a per se violation of the ADA.

14. Defendant's premise fails to provide for any specifically identified handicapped accessible parking, accessibility ingress/egress route, or wheelchair loading area.

15. Defendant's property, specifically the "Sunoco Gas" located at 1950 Twelve Mile Road violates the ADA, regulations implementing the ADA, and the PWDCA.

16. The significance of the kind of violations at issue here was highlighted in hearings preceding the ADA's passage when the National Council on Disability reported to Congress that: The survey results dealing with the social life and leisure experiences paint a sobering picture of an isolated and secluded population of individuals with disabilities. A large majority of people with disabilities do not go to movies, do not go to the theater, do not go to see musical performances, and do not go to sports events. A substantial minority of persons with disabilities

never go to a restaurant, never go to a grocery store, and never go to a church or synagogue. The extent of non-participation of individuals with disabilities in social and recreational activities is alarming. (S. Rep. No. 116, 101st Cong., 1st Sess. 10-11 (1989)).

17. The Supplementary Information of 28 C.F.R. § 36 provides, among other things, as follows:

"Some of the most frequently cited qualitative benefits of increased access are the increase in one's personal sense of dignity that arises from increased access and the decrease in possibly humiliating incidents due to accessibility barriers. Struggling to use a non-accessible facilities negatively affects a person's sense of independence and can lead to humiliating incidents, derisive comments, or embarrassment. These humiliations, together with feelings of being stigmatized as different or inferior from being relegated to use other, less comfortable or pleasant elements of a facility (such as a bathroom instead of a kitchen sink for rinsing a coffee mug at work), all have a negative impact on persons with disabilities."

18. Plaintiff seek a permanent injunction, pursuant to 42 U.S.C. § 12182(b)(2) and 28 C.F.R. § 36.504(a) enjoining the Defendant from continuing its discriminatory practices; including an order directing Defendant to make readily achievable alterations to their facilities so as to remove physical barriers to access and make their facilities fully accessible to and independently usable by individuals with disabilities to the extent required by the ADA and the PWDCA; and also including an order requiring Defendant to make all reasonable modifications in policies, practices or procedures necessary to afford all offered goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities on a full and equal basis.

19. The Plaintiff further seeks an order requiring Defendant to pay his reasonable attorneys' fees, litigation expenses, and costs of suit pursuant to 42 U.S.C. § 12205, 28 C.F.R. § 36.505 or as otherwise provided by law and such other relief as it deems just and proper, and/or is allowable under Title III of the ADA and the PWDCA.

20. Despite passage of the ADA more than 28 years ago, to this date, Defendant's property is not fully accessible to, and independently usable by, persons with disabilities. Defendant has failed to remove architectural barriers and take the actions clearly required of it by the ADA, even though such actions are readily achievable, and Defendant's conduct constitutes an ongoing and continuous violation of the law.

The ADA and Implementing Regulations

21. More than twenty-eight years ago, on July 26, 1990, President George H.W. Bush signed into law the ADA (42 U.S.C. § 12101, et seq.), a watershed civil rights act prohibiting discrimination on the basis of disability. The ADA broadly protects the rights of individuals with disabilities with respect to employment and access to State and local government services and places of public accommodation.

22. In connection with the passage of the ADA, Congress made findings that: Historically, society has tended to isolate and segregate individuals with disabilities. . . . discrimination against individuals with disabilities continues to be a serious and pervasive social problem. (42 U.S.C § 12101).

23. The stated that the purpose of the ADA is to: Provide a clear and comprehensive mandate for the elimination of discrimination against individuals with disabilities. . . . Provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities and invoke the sweep of congressional authority, including the power to enforce the Fourteenth Amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by individuals with disabilities. *See* 42 U.S.C. § 12101(b)

24. 28 C.F.R. § 36.304 sets forth the following order of priorities for all places of public accommodation: *First*, measures to provide access to the place of public accommodation

(business) from public sidewalks, parking, or public transportation. These measures include, for example, installing an entrance ramp, widening entrances, and providing accessible parking spaces. *Second*, measures to provide access to those areas where goods and services are made available to the public. These measures include, for example, adjusting the layout of display racks, rearranging tables, providing brailled and raised character signage, providing wheelchair accessible tables/desks, widening doors, providing visual alarms, and installing ramps. *Third*, measures to provide access to restroom facilities. These measures include, for example, removal of obstructing furniture or vending machines, widening of doors, installation of ramps, providing accessible signage, widening of toilet stalls, and installation of grab bars. *Fourth*, any other measures necessary to provide access to the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation.

25. The ADA "places the highest priority on measures that will enable individuals with disabilities to physically enter a place of public accommodation. This priority on 'getting through the door' recognizes that providing actual physical access to a facility from public sidewalks, public transportation, or parking is generally preferable to any alternative arrangements in terms of both business efficiency and the dignity of individuals with disabilities." 28 C.F.R. §36 (Supplementary Information).

26. 28 C.F.R. § 36.201 (b) provides that both the landlord who owns a building that houses a place of public accommodation and the tenant who owns or operates a place of public accommodation subject to the requirements of the ADA.

27. Title III of the ADA prohibits discrimination by places of "public accommodation," as that term is defined by 42 U.S.C. § 12181(7). It requires places of public accommodation to be readily accessible to, and independently usable by, individuals with disabilities. 42 U.S.C. § 12182.

28. On July 26, 1991, the Department of Justice issued rules implementing Title III of the ADA, which are codified at 28 C.F.R. Part 36.

29. Appendix A of the 1991 Title III regulations (republished as Appendix D to 28 CFR Part 36) contains the 1991 ADA standards for Accessible Design (the 1991 Standards). The 1991 Standards were based on the Americans with Disabilities Act Accessibility Guidelines (the 1991 ADAAG) published by the Architectural and Transportation Barriers Compliance Board (Access Board) on the same date.

30. In 2004, the Access Board issued final publication of revisions to the 1991 ADAAG (the 2004 ADAAG).

31. The Department of Justice subsequently issued the 2010 Standards for Accessible Design (the 2010 Standards). The 2010 Standards include 28 CFR part 36, Subpart D and the 2004 (ADAAG) found at 36 CFR part 1191, appendices B and D. (See Department of Justice 2010 ADA Standards for Accessible Design, at P. 1).

32. The ADA does not contain any "grandfathering" provision. Instead, all places of public accommodation are subject to the requirements of the 2010 ADA Standards for Accessible Design (the 2010 Standards), which became mandatory on March 15, 2012. The only permissible exceptions are those facilities that fall within the ADA's "safe harbor" provision, codified at 28 U.S.C. 36.304 (d)(2) and appendix to g 36.304 (d). The ADA's safe harbor provision applies to facilities that were either fully compliant with the 1991 ADA Standards for Accessible Design (the 1991 Standards) as of March 15, 2012; or undertook new construction or alterations between September 15, 2010 and March 15, 2012 - in which case they can choose between compliance with either the 1991 or the 2010 ADA standards. *Id.*

VIOLATIONS AT ISSUE

33. Plaintiff visited 'Sunoco Gas' located at Defendant's property 1950 Twelve Mile and encountered unlawful and discriminatory barriers including, but not necessarily limited to, the following:

- A. Defendant's property entrance has a step / curb of approximately 4 inches that constitutes a barrier to entry and an increase in vertical elevation greater than ¼ inch in violation of 2010 ADA Standards 401 *et seq*; 405.2; 303; 303.1; 303.2; 303.3 and 206.4.
- B. Defendant's property lacks an entrance ramp, having instead an absolute barrier to entry in the form of a ~ 4-inch step in violation of 2010 ADA Standards including but not limited to 401 *et seq*; 405.2 and 206 *et seq*.
- C. The parking lot does not have at least one properly striped van accessible space at least 11 feet wide with an access isle of at least 5 feet wide or at least 8 feet wide with an access isle of at least 8 feet wide in violation of the 2010 ADA Standards, 208.2, 502.2, 502.3, 502.3.3, 208.3.1 and the 1991 ADA "Safe Harbor" Standards, 4.6;
- D. There are no parking stall access aisles adjoining an accessible route (s) in violation of the 2010 ADA Standards, 502.3 and the legal ADA "Safe Harbor, Standards, 4.6; lack of proper disabled parking signage in violation of the 2010 ADA Standards 502.6 and the 1991 ADA "Safe Harbor" Standards, 4.6 for reasons that Defendant's premise does not have the required van accessibility designation;

34. The above listing is not to be considered all-inclusive of the barriers and violations of the ADA and PWDCA encountered by Plaintiff or which exist at the facility. In order to fully identify all of the discriminatory conditions at the facility, Plaintiff require an inspection which will be sought in the discovery phase of this litigation.

VIOLATIONS OF THE AMERICAN'S WITH DISABILITIES ACT
42 U.S.C. §§ 12101 *et seq.*

35. Plaintiff incorporate and re-allege the paragraphs above.

36. Section 302(a) of Title III of the ADA, 42 U.S.C. §§ 12101 *et seq.*, provides:

- A. No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation.

37. The ADA broadly protects the rights of individuals with disabilities in employment, access to State and local government services, places of public accommodation, transportation, and other important areas of American life.

38. Title III regulations prohibit discrimination in the activities of places of public accommodation and requires places of public accommodation to be readily accessible to, and independently usable by, individuals with disabilities. 42 U.S.C. § 12181-89, 36 C.F.R. part 1191.

39. On July 26, 1991, the Department of Justice ("DOJ") issued rules implementing Title III of the ADA, which are codified at 28 CFR Part 36.

40. Appendix A of the 1991 Title III regulations (republished as appendices B and D to 36 C.F.R. part 1191, and 28 C.F.R. part 36) contains the ADA standards for Accessible Design (1991 Standards), which were based upon the Americans with Disabilities Act Accessibility Guidelines (1991 ADAAG) published by the Access Board on the same date.

41. 42 U.S.C. § 12182(a) provides that “No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (*or leases to*), or operates a place of public accommodation.”

42. The ADA also provides a private right of action for preventative relief, including an application for a permanent or temporary injunction or restraining order for “any person who is being subjected to discrimination on the basis of disability in violation of Title III.” 28 C.F.R. § 36.501.

43. The duty of compliance with the ADA is not delegable.

44. Defendant, and the businesses therein, are public accommodations and service establishments, and as such must be, but are not, in compliance with the Americans with Disabilities Act (“ADA”) and Americans with Disabilities Act Accessibility Guidelines (“ADAAG”).

45. Plaintiff was unlawfully denied full and equal enjoyment of the goods, services, facilities, privileges, and advantages of the property and the businesses therein on the basis of his disability, due to Defendant’s property failing to be in compliance with Title III of the Americans with Disabilities Act and its accompanying regulations, as prohibited by 42 U.S.C. § 12182, et seq., and will continue to discriminate against Plaintiff and others with disabilities unless and until Defendant is compelled to remove all physical barriers that exist at the facility, including those specifically set forth herein, and make the facility accessible to and usable by persons with disabilities, including Plaintiff.

46. Defendant has discriminated against Plaintiff and others in that it has failed to make its place of public accommodation fully accessible to persons with disabilities on a full and equal

basis in violation of 42 U.S.C. § 12152(a) and the regulations promulgated thereunder as described above.

47. The Plaintiff, and others similarly-situated, are without adequate remedy at law and are suffering irreparable harm, and reasonably anticipate that they will continue to suffer irreparable harm unless and until Defendant is required to remove the physical barriers, dangerous conditions and ADA violations that exist at the facility, including those set forth herein.

48. Pursuant to 42 U.S.C. § 12187, Plaintiff requests that the Court issue an injunction requiring Defendant to make such readily achievable alterations as are legally required to provide full and equal enjoyment of the goods, services, facilities, privileges, and advantages on its property to disabled persons. In connection with that relief, Plaintiff requests reasonable attorney's fees and costs of maintaining this action.

COUNT II
VIOLATION OF MICHIGAN PERSONS WITH DISABILITIES CIVIL RIGHTS ACT
M.C.L. § 37.1301 *et seq.*

49. Plaintiff adopts and restates the allegations stated in the preceding paragraphs as fully stated herein.

50. Defendant, and the businesses therein, are "place[s] of public accommodation" pursuant to M.C.L. § 37.1301(a).

51. Defendant committed an unlawful act pursuant to M.C.L. § 37.1302(a) by denying Plaintiff full enjoyment of its goods, services, accommodations, advantages, facilities, or privileges.

52. Pursuant to M.C.L. § 37.1606, Plaintiff is entitled to compensatory and exemplary damages, and attorney's fees and costs, in an amount to be determined at trial, but in any event not less than \$25,000.00, as well as issuance of an injunction requiring Defendant to allow full and equal enjoyment of its goods, services, facilities, privileges, and advantages to disabled persons.

53. With respect to prospective relief, Plaintiff alleges that Plaintiff is suffering a continuing injury or is under a real and immediate threat of being injured in the future.

54. Plaintiff avers that Plaintiff intends to visit Defendant's establishment several times per year in the near future, but is deterred from doing so while Defendant violates the ADA.

55. Plaintiff avers that any voluntary cessation of Defendant's noncompliance with the ADA may be readily reversed by the reinstatement of the barriers to individuals with disabilities. Therefore, injunctive relief should be issued irrespective of Defendant's voluntary cessation.

56. WHEREFORE, Plaintiff demands, for Count I, an injunction requiring Defendant to make all readily achievable alterations to allow full and equal enjoyment of the goods, services, facilities, privileges, and advantages to disabled persons, and the reasonable attorney's fees and costs of maintaining this action; and, for Count II, compensatory and exemplary damages, and attorney's fees and costs, in an amount to be determined at trial, but in any event not less than \$25,000.00, as well as issuance of an injunction requiring Defendant to allow full and equal enjoyment of the goods, services, facilities, privileges, and advantages to disabled persons.

Dated: 11/12/2018

Respectfully Submitted:

By: /s/ David S. Parnell

David S. Parnell (P77628)